

HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

BOILERMAKERS NATIONAL ANNUITY  
TRUST FUND, on Behalf of Itself and All Others  
Similarly Situated,

Plaintiff,

v.

WAMU MORTGAGE PASS-THROUGH  
CERTIFICATES, SERIES AR1, *et al.*,

Defendants.

**Master Case No.: C09-0037 (MJP)**

**ECF CASE**

**JOINT STATUS REPORT  
REGARDING SCHEDULING AND  
DISCOVERY ISSUES**

DORAL BANK PUERTO RICO, on Behalf of Itself  
and All Others Similarly Situated,

Plaintiff,

v.

WASHINGTON MUTUAL ASSET  
ACCEPTANCE CORPORATION, *et al.*

Defendants.

1 The parties to the above-captioned actions respectfully jointly submit the following  
 2 report on the status of this matter in accordance with Federal Rules of Civil Procedure 16 and  
 3 26 and the Court's Order dated September 30, 2010 (Dkt. No. 196):

4 1. **Nature of the Case.** This is a complex lawsuit pursuant to the Securities Act of  
 5 1933 involving Defendants' issuance and sale of mortgage backed securities. Plaintiffs allege  
 6 that during 2006 and 2007 the Defendants securitized and sold billions of dollars worth of  
 7 Mortgage Pass-Through Certificates that securitized mortgage loans for resale to investors and  
 8 that the Offering Documents for those securities misstated and omitted material information  
 9 concerning the underwriting practices used to originate the mortgages underlying the  
 10 Certificates. Under the Securities Act of 1933, Plaintiffs allege that the Defendants are strictly  
 11 liable for the misstatements and omissions in the Offering Documents used to sell the  
 12 Certificates. Defendants deny that any misstatements or omissions were made in the Offering  
 13 Documents, and deny that they are liable in any way to Plaintiffs or the proposed class.

14 2. **ADR Method.** The Parties believe that the appropriate ADR method is  
 15 mediation supervised by a mediator agreed to by all parties with experience in the mediation of  
 16 complex securities litigation.

17 3. **ADR Timing.** The Parties recognize that the Court encourages efforts to utilize  
 18 ADR procedures to resolve litigation at as early a stage as reasonably possible. Plaintiffs  
 19 believe that a mediation session should take place as soon as practicable and, given the overlap  
 20 in issues and potential insurance coverage, in conjunction with the mediation in the non-  
 21 ERISA claims *In re Washington Mutual Securities and ERISA Litigation*, Case No. C08-0387  
 22 MJP (the "Securities and ERISA Litigation"), which is set to occur within 60 days of the  
 23 Court's ruling on class certification in that action. Specifically, Plaintiffs believe that the  
 24 Parties should select a mediator agreeable to all parties in this litigation and in the Securities  
 25 and ERISA Litigation, so that a mediation can proceed promptly following the Court's ruling  
 26 on class certification with respect to the non-ERISA claims in the Securities and ERISA  
 27

1 Litigation. Defendants are considering Plaintiffs' suggestion regarding the timing of  
2 mediation.

3           **4. Joinder of Additional Parties.** Plaintiffs do not propose joining additional  
4 parties and, consequently, no deadline for joining additional Parties need be set. Plaintiffs do,  
5 however, reserve their right to request leave of the Court to join additional parties should  
6 future circumstances make it appropriate for them to do so as justice may require. Defendants  
7 reserve the right to oppose any such request.

8           **5. Discovery Plan.** An initial FRCP 26(f) Conference was held telephonically on  
9 October 4, 2010. All parties were represented at that Conference. The Parties respectfully  
10 request that the deadline to develop a discovery plan pursuant to Federal Rule of Civil  
11 Procedure 26(f) be extended until October 25, 2010. This will allow the Parties to negotiate  
12 the extent to which discovery in this litigation should be coordinated with other litigation  
13 pending before this Court. The discovery plan the Parties will develop will identify all aspects  
14 of such a plan on which the Parties agree and will identify and request that the Court resolve  
15 any areas of disagreement with respect to the terms of such a plan. Pursuant to the Court's  
16 Order, the provisions of Rule 26(f) and the circumstances of this case, the proposed Discovery  
17 Plan will include at least the following:

- 18           a.       The subjects on which discovery may be needed;
- 19           b.       Timing of discovery: Defendants believe that a topic of discussion  
20           should be the phasing of discovery on certain issues, such as class certification;  
21           Plaintiffs agree that the timing of various aspects of discovery should be discussed,  
22           but do not agree that there should be bifurcation or "phasing" of discovery;
- 23           c.       How discovery should be conducted with respect to documents not  
24           controlled by Defendants: Plaintiffs believe that this discussion should include a  
25           specific discussion of issues created by the need to obtain discovery from any  
26           documents or witnesses controlled by J.P. Morgan Chase to the extent Defendants  
27

1 assert they do not control any such documents and witnesses; Defendants have not  
2 agreed that this should be a specific topic of discussion;

3 d. The Format for production of Electronically Stored Information  
4 (“ESI”) and any other relevant ESI issues;

5 e. The entry of a protective order governing the production of  
6 confidential information;

7 f. What changes should be made in the limitations on discovery imposed  
8 under the Federal and Local Civil Rules, including the number of depositions and  
9 interrogatories that should be permitted, or, if more information is needed before an  
10 informed decision can be made on what changes are necessary, a deadline for  
11 submitting to the Court a proposal as to what proposed changes should be made;

12 g. Any issues relevant to disclosure to Plaintiffs in this case of discovery  
13 materials produced in other litigation pending before this court involving the same or  
14 similar Defendants.

15 h. Any other orders that should be entered by the Court under FRCP  
16 26(c) or under Local Rule CR 16(b) and (c).

17 **6. Discovery Completion Date.** The Parties propose that all discovery in this case  
18 be completed by March 16, 2012. Plaintiffs believe that the parties should be permitted to  
19 respond to contention interrogatories after the March 16, 2012 deadline.

20 **7. Denial of Consent to Referral to a Magistrate.** The Parties do not agree that a  
21 full-time Magistrate Judge may conduct all proceedings, including trial and the entry of  
22 judgment, under 28 U.S.C. § 636(c) and Local Rule MJR 13.

23 **8. Bifurcation.** The parties disagree on whether discovery should be bifurcated:

24 a. Plaintiffs do not believe that discovery should be bifurcated. While  
25 Plaintiffs are amenable to prioritizing discovery concerning class certification issues  
26 in the first months of discovery, equally important to Plaintiffs is the production to  
27 them of documents that were produced to regulatory or governmental entities.

1 Plaintiffs believe there is no clear distinction between merit and class discovery and  
 2 thus, this Court should allow all discovery to proceed as it did in the Securities and  
 3 ERISA litigation.

4 b. Defendants believe that discovery should be phased so that an initial  
 5 period of discovery focuses on issues associated with class certification, and all  
 6 document production and written discovery and most if not all fact depositions  
 7 relating to class certification are completed prior to the filing of Plaintiffs' motion for  
 8 class certification.

9 **9. Pretrial Statements and Order.** The Parties do not believe that, at this time,  
 10 there is any reason to conclude that the pretrial statements and pretrial order called for by  
 11 Local Rules CR 16(e), (h), (i), and (l), and 16.1 should be dispensed with in part or in their  
 12 entirety for the sake of economy.

13 **10. Suggested Procedures to Simplify the Case.** The Parties propose the following  
 14 special procedures for simplifying this case:

15 a. Plaintiffs propose that the Parties shall adopt a procedure similar to  
 16 that employed in the Securities and ERISA Litigation, pursuant to which Defendants  
 17 and/or J.P. Morgan Chase shall be required to produce to Plaintiffs in this case  
 18 documents produced to any relevant regulatory or government entity that requested  
 19 documents from Washington Mutual (including officers, directors or affiliates) as  
 20 part of formal or informal investigations, that Such documents shall be referred to as  
 21 Investigatory Disclosure Documents, and that the deadline for such production shall  
 22 be December 1, 2010. Defendants do not agree to this proposal at this time.

23 b. For the avoidance of confusion, the Parties recommend that the  
 24 caption of this case be modified to read as follows: *In re Washington Mutual*  
 25 *Mortgage Backed Securities Litigation*, Master Case No.: C09-0037 (MJP).

26 **11. Trial Date.** The Parties believe that this case will be ready for trial by August  
 27 15, 2012.

1           **12. Trial by Jury.** Plaintiffs have requested a jury trial.

2           **13. Length of Trial.** The Parties estimate that approximately 25 trial days will be  
3 required for this trial.

4           **14. Trial Counsel.** The names, addresses, telephone numbers and e-mail addresses  
5 of the parties' trial counsel are contained in the signature blocks below.

6           **15. Service.** All Defendants in this matter have been served or waived service and  
7 the FRCP 26(f) Conference process has commenced. The parties propose that initial  
8 disclosures shall be exchanged by November 11, 2010.

9           **16. Proposed Schedule.** The Parties request a scheduling conference, after the  
10 proposed October 25, 2011 submission of a discovery plan to the Court, and prior to a  
11 scheduling order being entered in the case. The Parties further recommend that the Court  
12 adopt the following deadlines:

<b>Event</b>	<b>Deadline (Plaintiffs' Proposal)</b>	<b>Deadline (Defendants' Proposal)</b>
Mediation Deadline	Equivalent to the deadline in Case Nos. C08-0387 MJP, and C07-1874 MJP,	No deadline
Continue and Finalize FRCP 26(f) Conference (to discuss rule 26 issues not dealt with in this report)	10/20/2010	same
Proposed Joint Discovery Plan Submitted to the Court	10/25/2010	same
Initial Disclosures per FRCP 26(a)(1)	11/11/2010	same
Production of Investigatory Disclosure Documents (documents produced in connection with government or regulatory investigations)	12/01/2010	none
Answer to Complaint	12/15/2010	
Written Discovery and Document Production on Class Certification Complete	Plaintiffs do not believe bifurcation is necessary or appropriate	4/06/2011

<b>Event</b>	<b>Deadline (Plaintiffs' Proposal)</b>	<b>Deadline (Defendants' Proposal)</b>
Motion for Class Certification	02/11/2011 <sup>1</sup>	same
Response to Motion for Class Certification	03/25/2011	04/08/2011
Reply for Motion for Class Certification	4/29/2011	05/06/2011
Document Production Substantially Complete	07/29/2011	same
Fact Discovery Close	12/01/2011	
Last Day to File Fact Discovery Motions	12/15/2011	same
Deadline for Amending any Pleadings	01/07/2012	same
Exchange Merits Expert Reports	01/21/2012	same
Exchange Rebuttal Merits Expert Reports	02/18/2012	3/07/2012
Close of Expert Discovery (except for discovery motions);	03/16/2012	03/30/2012
Deadline for Expert Discovery Motions to be Filed	03/16/2012	04/06/2012
Motions for Summary Judgment	04/13/2012	same
Responses to Motions for Summary Judgment	05/11/2012	same
Replies for Motions for Summary Judgment	05/25/2012	same
Filing of Motions in Limine	07/01/2012	same
Proposed Pre-Trial Order (LR 16(e))	07/15/2012	same
Parties Designate Trial Counsel	07/15/2012	same
Pre-Trial Conference	TBD	same
<b>TRIAL</b>	<b>08/15/2012</b>	same

<sup>1</sup> This deadline assumes no unforeseen issues arise regarding obtaining trade data from Washington Mutual entities due to its bankruptcy or from relevant third parties.

1 Dated: October 12, 2010

2 Respectfully submitted,

3 **TOUSLEY BRAIN STEPHENS PLLC**

4 By: /s/ Nancy A. Pacharzina  
5 Kim D. Stephens, WSBA #11984  
6 Nancy A. Pacharzina, WSBA #25946  
7 1700 Seventh Avenue, Suite 2200  
8 Seattle, Washington 98101  
9 Telephone: (206) 682-5600  
10 Facsimile: (206) 682-2992  
11 Email: kstephens@tousley.com  
12 npacharzina@tousley.com

13 *Liaison Counsel for Plaintiffs and the Proposed*  
14 *Class*

15 **SCOTT+SCOTT LLP**

16 Arthur L. Shingler III (admitted pro hac vice)  
17 Hal D. Cunningham (admitted pro hac vice)  
18 600 B Street, Suite 1500  
19 San Diego, California 92101  
20 Telephone: (619) 233-4565  
21 Facsimile: (619) 233-0508  
22 Email: ashingler@scott-scott.com  
23 hcunningham@scott-scott.com

24 Joseph P. Guglielmo (admitted pro hac vice)  
25 500 Fifth Avenue, 40th Floor  
26 New York, New York 10110  
27 Telephone: (212) 223-6444  
Facsimile: (212) 223-6334  
Email: jguglielmo@scott-scott.com



**COHEN MILSTEIN SELLERS &  
TOLL PLLC**

Steven J. Toll

Julie Goldsmith Reiser, WSBA #27485

Joshua S. Devore (admitted pro hac vice)

Matthew B. Kaplan (admitted pro hac vice)

S. Douglas Bunch (admitted pro hac vice)

1100 New York Avenue, NW

Suite 500 West

Washington, D.C. 20005

Telephone: (202) 408-4600

Facsimile: (202) 408-4699

Email: [stoll@cohenmilstein.com](mailto:stoll@cohenmilstein.com)

[jreiser@cohenmilstein.com](mailto:jreiser@cohenmilstein.com)

[jdevore@cohenmilstein.com](mailto:jdevore@cohenmilstein.com)

[mkaplan@cohenmilstein.com](mailto:mkaplan@cohenmilstein.com)

[dbunch@cohenmilstein.com](mailto:dbunch@cohenmilstein.com)

Joel P. Laitman (admitted pro hac vice)

Christopher Lometti (admitted pro hac vice)

Daniel B. Rehns (admitted pro hac vice)

150 East 52nd Street, Thirtieth Floor

New York, New York 10022

Telephone: (212) 838-7797

Facsimile: (212) 838-7745

Email: [jlaitman@cohenmilstein.com](mailto:jlaitman@cohenmilstein.com)

[clometti@cohenmilstain.com](mailto:clometti@cohenmilstain.com)

[drehns@cohenmilstein.com](mailto:drehns@cohenmilstein.com)

*Lead Counsel for the Proposed Class*

**BINGHAM McCUTCHEN LLP**

David M. Balabanian (*Pro Hac Vice*)

John D. Pernick (*Pro Hac Vice*)

Frank Busch (*Pro Hac Vice*)

Three Embarcadero Center

San Francisco, CA 94111-4067

Tel: (415) 393-2544

Fax: (415) 262-9203

Email: david.balabanian@bingham.com

john.pernick@bingham.com

frank.busch@bingham.com

Susan L. Hoffman (admitted pro hac vice)

355 South Grand Avenue, Suite 4400

Los Angeles, CA 90071-3106

Tel: (213) 680-6454

Fax: (213) 680- 6499

Email: susan.hoffman@bingham.com

**HILLIS CLARK MARTIN & PETERSON**

By: /s/

Brian C. Free, WSBA #35788

Louis D. Peterson

1221 Second Ave, Suite 500

Seattle, WA 98101-2925

Tel: (206) 470-7646

Email: bcf@hcmp.com

ldp@hcmp.com

*Counsel for Defendants WaMu Asset Acceptance Corporation, WaMu Capital Corporation, David Beck, Diane Novak, Rolland Jurgens, Richard Careaga, Thomas Lehman, Stephen Fortunato, and Donald Wilhelm*